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OFFICE OF PETITIONS

In re Application of	:	
Baraff et al.	:	DECISION ON APPLICATION
Application No. 09/851,940	:	FOR PATENT TERM ADJUSTMENT
Filed: May 10, 2001	:	
Attorney Docket No. 022972-00008	:	
	:	

This is in response to the "Application for Patent Term Adjustment Correction" filed March 17, 2005. Applicants request that the Patent Term Adjustment indicated in the Notice of Allowance be corrected from two hundred and fourteen (214) days to three hundred and fifteen days (315) days.

The application for patent term adjustment is **GRANTED**. For the reasons stated herein, the initial determination of patent term adjustment should be greater than requested by applicants.

The Office has updated the PAIR screen to reflect that the correct Patent Term Adjustment determination at the time of the mailing of the Notice of Allowance is **three hundred and eighty-nine (389) days**. A copy of the updated PAIR screen, showing the correct determination, is enclosed.

On December 16, 2004 the Notice of Allowance was mailed, with a Patent Term Adjustment of two hundred and fourteen (214) days. In response, the applicants timely filed the instant petition[1]. Applicants assert that there should not have been a reduction of one hundred and one (101) days for the filing of the "Response after Non-Final Action" entered on January 30, 2004 because it

[1] PALM records indicate that the issue fee payment was received on March 18, 2005

was faxed by the applicants and received by the Office on October 21, 2003, within three months of the date of the Office Action.

The request to correct the delay of one hundred and one (101) days associated with the filing of the aforementioned Response is granted. The Office records indicate that in reply to the Non-Final Rejection mailed by the Office on July 21, 2003, the applicants filed the Response on October 21, 2003. This was within the three-month period set forth in § 1.704(b), and thus, no reduction is warranted for applicant delay.

Subsequently, on January 30, 2004, the applicants re-faxed the Response. However, the applicants assert that re-submission was requested by the Examiner on January 29, 2004. This assertion is corroborated by a written statement filed on January 30, 2004. Therefore, the one hundred and one (101) day reduction is not warranted and is corrected to zero (0) days.

In addition, applicants are entitled to a seventy-four (74) day period of adjustment due to the Office delay in mailing of a Final Rejection. Since the applicants filed the Response to the Non-Final Action on October 21, 2003, the Office was obligated to reply within four months of that date under 37 C.F.R. § 1.702(a)(2). However, the Office mailed the Final Rejection on May 5, 2004, four months and 74 days after receipt of the response. Due to the Office delay, a period of adjustment of seventy-four (74) days is entered.

In view of the above, the correct determination of the Patent Term Adjustment after mailing of the Notice of Allowance is three hundred and eighty-nine (389) days.

Receipt of the $200.00 fee set forth in 37 CFR 1.18(e) is acknowledged. No additional fees are required.

The application is being forwarded to the Publishing Division for processing into a patent.

Telephone inquiries with regard to this matter should be directed to Senior Petitions Attorney Nancy Johnson at (571) 272 - 3219.

Kery A. Fries

Kery A. Fries
Senior Legal Advisor
Office of Patent Legal Administration
Office of Deputy Commissioner
for Patent Examination Policy

Enclosure: Copy of UPDATED Pair Screen